

Boston College Law Review

Volume 3 | Issue 2

Article 8

1-1-1962

Blue Sky Laws

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Recommended Citation

Daniel J. Johnedis, *Blue Sky Laws*, 3 B.C.L. Rev. 218 (1962), <http://lawdigitalcommons.bc.edu/bclr/vol3/iss2/8>

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CURRENT LEGISLATION

BLUE SKY LAWS

UNIFORM SECURITIES ACT

Standing out in bold relief from the maze of blue sky legislation passed in 1961 are four statutes enacted by Colorado, Indiana, Montana, and South Carolina.¹ By adopting substantially all the Uniform Securities Act,² these states become coupled to the lengthening train of jurisdictions accepting the Uniform Act since its approval by the National Conference of Commissioners on Uniform State Laws in 1956.³ Presently, the Uniform Act is being considered in Oregon and Utah as well as in California where it has generated some controversy.⁴

In Colorado, the Uniform Securities Act has been made part of the state law in nearly verbatim form. Although the Colorado statute changes a few terms, they retain substantially the same meaning as those employed in the Uniform Act.⁵ However, Colorado has totally omitted any provisions relating to investment advisers as recommended under sections 102 and 401(f) of the

¹ Colo. Laws 1961, Uniform Securities Act §§ 1-30 (effective July, 1961). Ind. Ann. Stat. §§ 25-854 to 25-876 (Burns 1960) (effective July, 1961). Mont. Rev. Codes Ann. §§ 15-201 to 15-225 (1947) (effective July, 1961). S.C. Acts 1961, Uniform Securities Act §§ 101-418 (effective June, 1961).

² The Uniform Securities Act, a product of the efforts of Professor Louis Loss of Harvard Law School, comprises four basic parts: 1) fraudulent and other prohibited practices, 2) registration of broker-dealers, agents, and investment advisors, 3) registration of securities, and 4) general provisions such as exemptions and sanctions. The general purpose of the act is to offer to the states a comprehensive securities regulation law which can be adopted in whole or in part, achieving at least some uniformity in this field. For a summary of the act see Loss and Cowett, *Blue Sky Law* 238-43 (1958). See pp. 245-420 of the same book for text of the Uniform Securities Act with official comments and draftsmen's comments. The text is also found in *Blue Sky L. Rep.* ¶¶ 4901-53.

³ Alabama, Alaska, Arkansas, Hawaii, Kansas, Kentucky, New Jersey, Oklahoma, Virginia, and Washington. The Territory of Guam has also adopted the act. Accepting portions of the Uniform Act are Connecticut, Georgia, Iowa, Missouri, New Mexico, New York, North Dakota, Oregon, and Texas.

⁴ Edward, *California Measures the Uniform Securities Act Against Its Corporate Securities Law*, 15 *Bus. Law.* 814 (1961) wherein the author compares the existing California blue sky law with the Uniform Securities Act, concluding that "there are so many things wrong with the present law that their correction produces substantially the Uniform Securities Act," at 840.

But see: Ellis and McClosky, *The Future of Corporate Securities Regulation in California—Effect of Proposed Uniform Act*, 12 *Hastings L.J.* 256, 273 (1961), wherein the authors assert that the Uniform Securities Act is being advocated by those interested in selling large national issues in California to weaken the authority of the Commissioner of Corporations. Continuing, they declare, "... its most important effect would be to deprive the Commissioner of his power to pass on the fairness of, and impose conditions on, a proposed issue, and thus prevent him from squeezing the water out of many large "gray" issues that would soon come floating westward," at 274.

⁵ The term "licensing" of dealers is used instead of "registration" as in the Uniform Act, and "salesman" is employed in lieu of "agent," but agent and salesman are defined the same in both acts, and the registration and licensing procedures are alike in both statutes.

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Uniform Act.⁶ Another departure from the Uniform Act is the total exclusion of the provision making conduct violative of the act tantamount to consent to the appointment of the administrator of securities to receive process for the violator where personal jurisdiction cannot otherwise be secured.⁷ Nevertheless, Colorado's new law does include the requirement of filing a statement of consent to service of process at the time of registration.⁸ Finally, the Colorado legislature has added a separate section to its act, not found in the Uniform Act, excluding from the scope of the statute certain types of banking organizations and notes reflecting the balance due on purchases of real or personal property where such is secured by first lien chattel mortgages or mortgages on real property.⁹

Although Indiana has in substance adopted the Uniform Securities Act and has included provisions affecting fraudulent and other prohibited practices by requiring registration of securities and dealers and by providing for both criminal and civil sanctions, it has departed in several respects from the act. Some sections have been altered,¹⁰ others omitted or consolidated,¹¹ and some added.¹² As in the Colorado act, Indiana omits any provisions for registration of investment advisers. Also, the Indiana legislature has made two additions in the important area of exempted transactions. Included are sales and assignments of fractional interests in oil, gas, or other mineral leases,¹³ and deposits of shares under any voting trust agreement and the issue of voting trust certificates.¹⁴

The Montana legislature has taken an approach similar to that followed by Indiana, *i.e.*, it has adopted the Uniform Securities Act in its essential parts, but has performed legal surgery by cutting away whole sections,¹⁵ enlarging other sections,¹⁶ and adding entirely new subsections to the body of the statute.¹⁷ Once again changes occur in the area of exemptions with

⁶ Blue Sky L. Rep. §§ 4903 and 4931(f).

⁷ Blue Sky L. Rep. § 4944(h).

⁸ Colo. Laws 1961, Uniform Securities Act § 25. This provision is found in the Uniform Securities Act in Blue Sky L. Rep. § 4944(g).

⁹ Colo. Laws 1961, Uniform Securities Act § 29.

¹⁰ Ind. Ann. Stat. § 25-863 (Burns 1960) (registration procedure), § 25-872 (criminal penalties), and § 25-874 (judicial review).

¹¹ Omitted are the following provisions from the Uniform Securities Act: Blue Sky L. Rep. § 4902 (activities of investment advisers), § 4911 (portions related to investment advisers omitted), § 4931 (definition of investment advisers omitted), § 4932 (insurance company exemption left out), § 4933 (filing of sales and advertising literature), § 4942 (rules, forms, orders, and hearings), § 4943 (administrative files and opinions), § 4944 (scope of the act), and § 4948 (repeal and saving provisions). § 25-869 in the Indiana code was expanded to include other portions of the Uniform Securities Act.

¹² Ind. Ann. Stat. § 25-855 (Burns 1960) (two exemptions).

¹³ Ind. Ann. Stat. § 25-855(13) (Burns 1960).

¹⁴ Ind. Ann. Stat. § 25-855(14) (Burns 1960).

¹⁵ Blue Sky L. Rep. § 4932 (exemption of evidence of indebtedness secured by mortgage or deed of trust, or by agreement of sale, if entire mortgage, deed of trust, and agreement, together with evidence of indebtedness, is offered and sold as a unit), § 4933 (filing of sales and advertising literature), and § 4944(h) (imposing constructive consent to service of process to violators of act).

¹⁶ Mont. Rev. Codes Ann. § 15-2008 (1947) (registration by notification) and § 15-2024 (administration).

¹⁷ Mont. Rev. Codes Ann. § 15-2014(12)(13) (exemptions reported in text of this note).

Montana omitting transactions secured by chattel mortgages or mortgages secured by realty.¹⁸ Montana has added two exempted transactions, the first of which refers to the issuance of stock dividends, whether or not the corporation involved is the issuer, if nothing of value is given by the stockholders for the distribution but a surrender of a right to the cash dividends where the stockholder would have the choice of receiving dividends in cash or in stocks.¹⁹ The other added exemption is any transaction incident to a right of conversion or statutory or judicially approved reclassification, recapitalization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets.²⁰ Lastly, like Colorado, Montana omits the section dealing with constructive consent to service of process while however, including the requirement under section 414 (g) of the Uniform Act of filing with the administrator irrevocable consent appointing the administrator attorney to receive service of process.²¹

To an even greater extent than Colorado, South Carolina has adopted all the detailed provisions of the Uniform Securities Act. The few variations that have been made are of relatively minor significance.²² However, the clause exempting securities issued by insurance companies which appears in the Uniform Act²³ is omitted from Colorado's act.²⁴

Perhaps the only sound conclusion that can be drawn from a review of the above statutes in the light of the acceptance by nineteen states of all or part of the Uniform Securities Act between 1956 and 1960 is the emergence of a clearly defined trend toward increasing uniformity in a field of law sorely in need of uniformity.²⁵

¹⁸ Blue Sky L. Rep. ¶ 4932.

¹⁹ Mont. Rev. Codes Ann. § 15-2014(12) (1947).

²⁰ Mont. Rev. Codes Ann. § 15-2014(13) (1947).

²¹ It is interesting to note that both Montana and Colorado have statutes setting forth substitutional service of process similar to that in the Uniform Act. Montana provides for constructive service of process for corporations by making the secretary of state attorney to receive process for corporation officials who are not available. Mont. Rev. Stat. Ann. §§ 93-3008 to 93-3012 (1947). Colorado uses this process to gain jurisdiction over non-resident motorists passing through that state. Colo. Rev. Stat. Ann. §§ 13-8-1 to 13-8-4 (1953). Therefore, the objection of lack of constitutionality does not suggest itself as a reason for omitting § 414(h) of the Uniform Securities Act.

²² S.C. Acts 1961, Uniform Securities Act § 302(b)(7) (registration of securities) adds to Uniform Securities Act (Blue Sky L. Rep. ¶ 4922) "such additional information as the Securities Commissioner may by rule or order require." § 305 (general registration provisions) adds (m), registered securities are eligible for trading in secondary market at current prices on completion of the original offering when such securities are outstanding in the hands of the public. Blue Sky L. Rep. ¶ 4932 (exemption of insurance securities) omitted. § 403 (approval of sales literature) requires "approval" of such literature rather than mere filing (Blue Sky L. Rep. ¶ 4933).

²³ Blue Sky L. Rep. ¶ 4932.

²⁴ Blue Sky L. Rep. ¶ 4932(5).

²⁵ See Hill, Some Comments on the Uniform Securities Act, 55 Nw. U.L. Rev. 661 (1961). This analysis of the Uniform Act points out the lack of segregation between the uniform parts of the act (acceptance of which is necessary to give the USA any effectiveness) and the model aspects, although conceding the difficulty of such a task. However, the author does conclude that areas of the act which must be uniform are generally accepted with little controversy, while areas that need not be adopted for effective uniformity generally stimulate little controversy.

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REGISTRATION

Significant amendments have been made to the blue sky laws of Alaska and North Dakota,²⁶ while less important changes have been effected in the Arkansas and Florida statutes.²⁷ Alaska has enacted Part III of the Uniform Securities Act which deals with the registering of securities.²⁸ This part allows registration by either notification, coordination, or qualification.²⁹ By adding this part of the Uniform Act, Alaska joins the host of sister states mentioned above adopting the act in all its material aspects.

North Dakota has added a third method of registering specified types of securities, registration by announcement.³⁰ The other two types of securities registration allowed by the North Dakota act are registration by description, a relatively simple mode of registration but confined to securities the issuer of which has been in operation for not less than three years and has attained certain minimum earnings, and registration by qualification, a rather cumbersome process.³¹ Limited to securities outstanding in the hands of the public for not less than one year because of prior registration in North Dakota or through SEC registration by the issuer or the underwriter on behalf of the issuer, registration by announcement is a streamlined process not unlike the "notice of intention" method of registration used in Massachusetts and Rhode Island.³² Registration is achieved merely by sending to the commissioner certain basic information showing that the securities qualify under the announcement process and identifying the issuer and securities. The new section is supplementary to dealer registration since only a dealer registered under the act can take advantage of this new provision and, if a dealer is not so registered, he must file with the commissioner his announcement of intention to trade in securities. By making this addition to its law, North Dakota is following the general trend toward flexibility of securities

²⁶ Alaska Laws 1961, Uniform Securities Act, Part IV, §§ 401-06. N.D. Cent. Code § 10-04-07.1 (1943).

²⁷ Ark. Stat. § 67-1205 (1947). Fla. Stat. Ann. § 517.08 (1941).

²⁸ See Loss, *Developments in Blue Sky Laws*, 15 *Bus. Law.* 1021 (1960), wherein it is reported that "the first regulations promulgated by the Secretary of Commerce apparently overlooked the fact that the Alaska legislature had not adopted Part III, on registration of securities. . . . When this was brought to the Secretary's attention the regulations were appropriately amended."

²⁹ Registration by notification (§ 302) is a relatively simple procedure whereby a registration statement showing that the securities qualify for this type of procedure is filed. The statement becomes effective automatically at a fixed time unless the administrator accelerates or issues a stop order. However, such method is limited mainly to senior securities. Registration by coordination (§ 303) is limited to securities registered under the Securities Act of 1933 in connection with the same offering. This section limits the administrator to requiring only such information as is filed with the SEC. The registration statement is effective at the same time as federal registration is effective, if all conditions are met. Registration by qualification (§ 304) must be used when the other two methods are not. The registration statement is lengthy, and the effective date of registration is whenever the administrator so orders.

³⁰ N.D. Cent. Code § 10-04-07.1 (1943).

³¹ See 1 Loss, *Securities Regulations* 46-63 (2d ed. 1961) wherein both types of registration are discussed.

³² Sales of securities are legal upon filing of notice of intention containing specified information. If the administrator believes fraud is involved in the sale, or the sale is against the public interest, he may issue a stop order. 1 Loss, *Securities Regulations* 53-54 (2d ed. 1961).

registration, particularly as exemplified by states adopting Part III of the Uniform Securities Act which specifically provides for such streamlined registration.³³

Both Arkansas and Florida have amended the registration portions of their blue sky laws.³⁴ Mortgage loan companies and loan brokers are now required to register in Arkansas. This is an additional requirement to section 301 of the Uniform Act which Arkansas adopted in 1959. In Florida, bonds and notes secured by a first lien on pledged collateral may not be registered by notification.

CRIMINAL SANCTIONS

Two states have made violation of their blue sky laws felonies. In Oklahoma, any person who willfully violates the terms of the Oklahoma act or the rules or orders promulgated under it, or knowingly files any false or misleading statement, is guilty of a felony.³⁵ Texas makes it felonious conduct to act as a dealer, agent or salesman not registered as such under the Texas Securities Act.³⁶

ADMINISTRATION

Aside from the myriad minor changes in the field of administration, such as increases in filing fees and requirements that dealers post surety bonds, several enactments have been passed which are of some importance. Each reflects an attempted solution to the almost universal problem faced by administrators trying to give effect to a statute of enormous scope, but often lacking sufficient aid, information, or controls to effectively administer the law.³⁷ Connecticut and Utah administrators, known as the "Bank Commissioner" and the "Security Commissioner" respectively, have been given power to make regulations to enforce the blue sky laws in those states.³⁸ Maine has provided its administrator with an advisory committee comprised of registered securities dealers, chosen by the Maine Investment Dealers Association, to which the Bank Commissioner (administrator of the blue sky law) may disclose information related to the conditions, policies, and practices of securities dealers and salesmen under his supervision to such an extent as may assist him in the discharge of his duties.³⁹ Lastly, in Oregon, the Commissioner of Corporations may require an applicant for a license as a dealer or salesman to take an examination evidencing his knowledge and understanding of the securities business.⁴⁰

EXEMPTIONS

As can be seen from what has been previously noted, many states added exemptions to their blue sky laws while a few have made deletions. Reported here are some of the more significant changes.

³³ Uniform Securities Act § 302.

³⁴ *Supra* note 27.

³⁵ Okla. Stat. tit. 71, § 53 (1951).

³⁶ Tex. Pen. Code art. 581, § 29 (Supp. 1958).

³⁷ On the plight of administrators, see Loss and Cowett, *Blue Sky Law* 43-62 (1958).

³⁸ Conn. Public Acts 1961, C.651, No. 487-1. Utah Code Ann. § 61-1-1 (1953).

³⁹ Me. Rev. Stat. Ann. C.59 § 241-A (1954).

⁴⁰ Ore. Rev. Stat. § 59.170 (1953).

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California: Exempted from the securities law is any hypothecation of a certificate of interest in an oil or gas title or lease to a national or state bank to secure a loan.⁴¹ In addition, any promissory note secured by a lien on a single parcel of realty, when the note is not offered to the public and is not part of a series of notes secured by interests in the same property, is exempt.⁴²

Florida: No longer exempt are promissory notes or commercial paper, a step away from the trend evidenced in nearly all the states, which allow such an exemption.⁴³ Also exempt are agricultural cooperatives operating wholly within the state all of whose stockholders are legal residents of Florida and in which no non-resident promoter is interested.⁴⁴ By so including a cooperative among its list of exemptions, Florida joins several other states having similar provisions relating to cooperatives.⁴⁵ Finally, any sale, transfer, or delivery of securities to a pension plan has been brought under the category of exempted transactions.⁴⁶

Michigan: Any sale of securities contemplated by the Small Business Investment Act of 1958, is exempted from the operation of the blue sky law.⁴⁷ However, limitations were placed on the type of sales included in the purview of the amendment. Offerings and sales by non-profit development corporations formed to promote and aid in the growth of business enterprises are exempt.⁴⁸

Oklahoma: An amendment was passed narrowing the exemption relating to commercial paper to obligations to pay money sold or offered for sale to banks, savings institutions, trust companies, insurance companies, investment companies, and other financial institutions.⁴⁹ By regulation, the Administrator has broadened the span of the exemption of securities listed on national securities exchanges approved by the Administrator to any national securities exchange registered with and regulated by the SEC under the Securities Exchange Act of 1934.⁵⁰ This means that approval of the exchange by the Administrator is no longer required for the exemption.

South Dakota: Securities are exempt which are listed on any national securities exchange and over-the-counter securities that can be traded in interstate commerce under the Federal Securities and Exchange Commission regulations.⁵¹

Tennessee: Exempt are securities of corporations organized pursuant to the cooperative marketing law of Tennessee.⁵²

Utah: Joint ventures are exempted from the blue sky law provided

⁴¹ Cal. Corp. Code § 25156.

⁴² Cal. Corp. Code § 25102(d).

⁴³ Fla. Stat. Ann. § 517.05 (1941). See 1 Loss, Securities Regulations, op. cit. supra at 64.

⁴⁴ Fla. Stat. Ann. § 517 (1941).

⁴⁵ 1 Loss, Securities Regulations, op. cit. supra at 65.

⁴⁶ Fla. Stat. Ann. § 517.06 (1941).

⁴⁷ Mich. Comp. Laws § 45-1.105 (1948).

⁴⁸ Id.

⁴⁹ Okla. Sess. Laws 1961, S.B. No. 11.

⁵⁰ Blue Sky L. Rep. ¶ 39,614.

⁵¹ S.D. Code § 55.1903 (Supp. 1960).

⁵² Tenn. Code Ann. § 48-1619 (Supp. 1961).

no more than ten persons comprise the organization all having the same responsibility and signing the same agreement, or comprise the incorporators signing the articles of incorporation.⁵³

Washington: No longer exempt are transactions whereby interests in oil and gas leases on property are acquired by partnership or joint venture.⁵⁴

MISCELLANY

Although in 1961 many miscellaneous amendments were passed which defy any neat categorization, there are two which merit reporting. In Illinois the sale of life insurance and mutual fund shares as a "package" may be a separate security and must be registered.⁵⁵ In Oklahoma, oil, gas, and mining interests are not securities according to the recent legislative pronouncement.⁵⁶

DANIEL J. JOHNEDIS

CORPORATE LEGISLATION

On April 24, 1961, New York adopted a completely new corporation law¹ which will take effect April 1, 1963.² The new act, designated the Business Corporation Law, is essentially an integration and revision of existing New York statutes. However, the draftsmen, strongly influenced by the Model Business Corporation Act and various modern approaches adopted by other jurisdictions, added some significant innovations.

The scope of the following comment is limited to a presentation in outline form of the essential characteristics of this noteworthy legislation. For a more complete view of the new act it is strongly recommended that the reader study the text of the statute³ in conjunction with the Joint Committee Report.⁴

After April 1, 1963, business corporations will no longer come under the provisions of the New York General Corporation Law or of the New York Stock Corporation Law.⁵ Defining for the purposes of the statute, a corporation as a corporation for profit,⁶ the new law applies to every domestic or foreign corporation which is authorized or does business in New York,⁷ but it does not, however, apply to other types of corporations formed under other New York statutes.⁸

⁵³ Utah Code Ann. § 61-1-5 (1953).

⁵⁴ Wash. Rev. Code § 21.20.320 (1951).

⁵⁵ Blue Sky L. Rep. ¶ 16,791.

⁵⁶ Okla. Laws 1961, S.B. No. 10.

¹ N.Y. Session Laws 1961, ch. 855 [hereinafter cited by section].

² Section 1401.

³ *Supra* note 1.

⁴ New York Legislative document No. 12 (1961) [hereinafter cited as Document]. For a history of the Revision Committee see generally, Summary of Changes in New York Corporation Law 2-7 (Matthew Bender Co. 1961) [hereinafter cited as Summary].

⁵ Section 103 e.

⁶ Section 102 a(4).

⁷ Section 103 a.

⁸ Section 103 a. Excludes, therefore, corporations formed under the Banking